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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Reform of the Interstate)
Access Charge Rules)

RM-8356

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("USWC"), through counsel and pursuant to Section 1.405(b) of the Federal Communications Commission's ("Commission") Rules,¹ hereby submits its Reply to the comments² on the Petition for Rulemaking ("Petition") filed by the United States Telephone Association ("USTA") asking the Commission to initiate a rulemaking proceeding to reform the

¹47 CFR § 1.405(b).

²Comments were filed herein on November 1, 1993, by the following parties: Ad Hoc Telecommunications Users Committee, American Telephone and Telegraph Company ("AT&T"), Ameritech Telephone Companies, Armstrong Telephone Companies, Barry County Telephone Company, Bell Atlantic Telephone Companies ("Bell Atlantic"), BellSouth Telecommunications, Inc., Bentleyville Telephone Company, Blossom Telephone Company, Community Service Telephone Company, Competitive Telecommunications Association ("CompTel"), General Communication, Inc., GTE Service Corporation, Home Telephone Company, Hyperion Telecommunications, Illinois Commerce Commission, Information Technology Association of America, Ketchikan Public Utilities, MCI Telecommunications Corporation ("MCI"), MFS Communications Company, Inc. ("MFS"), Moapa Valley Telephone Company, Moore & Liberty Telephone Company, National Exchange Carrier Association, National Telephone Cooperative Association, North Pittsburgh Telephone Company, NYNEX Telephone Companies, Pacific Bell and Nevada Bell, Southwestern Bell Telephone Company, Sprint Communications Co. ("Sprint"), Taconic Telephone Corp., TDS Telecommunications Corp., Tipton Telephone Company Inc., United and Central Telephone Company, USWC, Winnebago Cooperative Telephone Association and Yelm Telephone Company.

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existing rules governing the structure and pricing of interstate access services provided by local exchange carriers ("LEC").

I. COMPREHENSIVE ACCESS REFORM IS NECESSARY

There is consensus among the commenters on one central point: "comprehensive" reform of the Commission's access charge rules is necessary.³ As AT&T states in its Comments, there is "the need for broad-ranging reform of the Commission's access rules to bring those rules into alignment with current marketplace and technological realities."⁴

USTA's Petition is currently the only concrete access reform proposal of a comprehensive nature before the Commission. USWC submits that the USTA Petition can serve as a valuable tool for the Commission to use in building a rulemaking proceeding for reforming the access charge rules.

II. COMPETITION IN INTERSTATE ACCESS SERVICES IS EMERGING;
USTA HAS NOT IMAGINED IT

Commenters' central criticism of USTA's proposal is essentially that it is based upon a "fictional" account of the advent of competition in the market for interexchange access services.⁵

³See, e.g., AT&T at 1; CompTel at 1 ("Access Charge Reform should be addressed in a comprehensive manner."); MCI at 2 ("[T]here is clear consensus that the time is ripe for a comprehensive reform of access charges."); Sprint at 1 ("Sprint has long supported a comprehensive review of access . . . rules."); MFS at 1 ("MFS supports the concept of access charge reform").

⁴AT&T at 1.

⁵See, e.g., MFS at 3-4; MCI at 2; Sprint at 7-8.

These opponents of USTA's proposal act as though the emergence of competition with the LECs' access services is a mere figment of USTA's imagination. This is simply not true.

First, the Commission has itself put in place a variety of initiatives to stimulate competition in this very market.⁶ Expanded interconnection is a prime example: the Commission, recognizing that allowing collocators into LECs' central offices could place LECs at a competitive disadvantage under current averaged pricing structures, has authorized both zone density pricing plans and term and volume discounts under certain circumstances to permit LEC access pricing to meet competitive threats in high volume areas.⁷ If the Commission can acknowledge that competition will emerge as a result of its own initiatives, it is unclear why the commenters cannot do the same.

⁶For a discussion of some of such initiatives, see "Federal Perspectives on Access Charge Reform -- A Staff Analysis," rel. Apr. 30, 1993, at 17-20 ("FCC Working Paper").

⁷The Commission characterized its decision to permit zone density pricing plans to be filed as a "change [in] our rules to expand the LECs' flexibility in responding to competition," with a service being "deemed subject to competition if interconnectors have provided service of that type over their own circuits using expanded interconnection." In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, 7454 n.412 (1992).

With respect to term and volume discounts, the Commission stated that "if volume and term discounts are justified by underlying costs, and are not otherwise unlawful, the LECs should -- indeed, must -- be allowed to offer them in order to encourage efficiency and full competition." In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 93-379, rel. Sep. 2, 1993, ¶ 115.

Second, the Common Carrier Bureau's Access Reform Task Force, in its Working Paper on access reform,⁸ addresses the "emerging competition at the local exchange access level."⁹ The Task Force reports that "[a]n increase in competition in interstate access services has occurred since 1983 for a number of reasons."¹⁰ These reasons include not only "the Commission's removal of certain barriers to entry," as discussed above, but also "new technologies," (e.g., fiber optics) and "other facility options" (e.g., cellular).¹¹ The Working Paper goes on to describe the desired goals of access reform in the context of the competition that has developed: "In response to the emergence of competition, the Commission's access rules should be flexible enough to foster competition between traditional service providers and alternative providers and yet be rigid enough to constrain anti-competitive responses."¹² Clearly, the Working Paper reflects an understanding that competition is arriving, and that a change in the current access rules to increase their

⁸See supra note 6.

⁹FCC Working Paper at 29.

¹⁰Id. at 17.

¹¹Id.

¹²Id. at 28-29. USWC believes that the USTA Petition's proposed rules precisely fit this prescription.

flexibility need not be delayed until the access services market is completely and unmitigatedly competitive.¹³

Third, it is clear that developments in the telecommunications industry as a whole will increasingly spur the access competition that USTA's opponents deny is emerging. The advent of personal communications services;¹⁴ the increasing potential for cable service franchisees to offer loop services in competition with LECs sometime in the future;¹⁵ the impending mergers of AT&T and McCaw Cellular¹⁶ and of Bell Atlantic and TCI; and USWC's own venture with Time Warner Entertainment¹⁷ -- will all present additional opportunities in the very near term for interexchange carriers to obtain access to end-user customers other than through LEC access services.

¹³If the market were already completely competitive, with no provider having a significantly greater market share than any other, then there would obviously be no need for any access rules at all, much less rules that would "foster competition" (unnecessary since competition would already be upon us) or "constrain anti-competitive responses" (superfluous, since no one would have enough market power to exert any anti-competitive effect). *Id.*

¹⁴See In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, First Report and Order, FCC 93-329, rel. July 23, 1993; Second Report and Order, FCC 93-451, rel. Oct. 22, 1993.

¹⁵See FCC Working Paper at 18.

¹⁶See In the Matter of American Telephone and Telegraph Company and McCaw Cellular Communications, Inc., Applications for Consent to Transfer of Control, File No. ENF-93-44 (see Public Notice, DA 93-1119, rel. Sep. 15, 1993).

¹⁷See In the Matter of Time Warner Entertainment Company, L.P. and U S WEST Communications, Inc. Petition for Waiver of Section 63.54 of the Commission's Rules, File No. DF-TW-01, Memorandum Opinion and Order, FCC 93-436, rel. Sep. 14, 1993.

Obviously, the LECs' dominance in every access market has not been eradicated. Despite certain commenters' attempts to mischaracterize USTA's proposal,¹⁸ USTA has never made any such claim. Full-blown competition has not arrived everywhere -- and USTA's Petition recognizes that fact. For example, USTA's proposed classification of markets into "initial," "transitional" and "competitive" market areas reflects a thorough understanding that competition is developing at different rates in different places, and to that end, it varies the degree of pricing flexibility with the degree of competition in each such market area.¹⁹ While one might debate the details, USTA's proposed access structure will allow flexible regulation to evolve in a manner commensurate with the growth of competition, without having to reform anew the entire access regime with each incremental competitive step.

III. "RADICAL DEREGULATION"²⁰ IS NOT PART OF USTA'S PLAN

While USTA's reform proposal could easily be characterized as comprehensive or far-reaching, in no way can it be deemed a "call for fundamental deregulation in the guise of access reform," as some commenters suggest.²¹ Most of today's federal regulatory strictures upon the LECs -- for example, dominant

¹⁸See, e.g., MFS at 4-6.

¹⁹See USTA Petition at 24-27.

²⁰Sprint at 7.

²¹CompTel at 16; see Sprint at 7.

carrier tariff filing and notice requirements;²² the obligation to file Section 214 applications to construct and operate new facilities or to abandon service;²³ prohibitions against undue discrimination;²⁴ universal service obligations; etc. -- will continue unchanged under USTA's proposal. LECs will still be regulated -- and certainly to a different and far greater extent than some of their existing and potential competitors.

IV. THE USTA PETITION IS THE ONLY EFFORT AT COMPREHENSIVE ACCESS REFORM ON THE TABLE

It is ironic that many commenters mouth support for ongoing access reform²⁵ -- yet they reject the only concrete attempt before the Commission to articulate how comprehensive reform would operate and what it would truly signify.

USTA has done a tremendous amount of work. It is too easy to take potshots at someone else's detailed proposal without undergoing the effort to present a counterproposal of substance. USWC submits that USTA has provided a substantial platform from which a notice of proposed rulemaking (or "NPRM") can constructively proceed. Issuance of an NPRM based upon USTA's Petition will not prevent anyone with a true commitment to comprehensive access reform -- but with a different vision of how

²²See 47 CFR § 61.58.

²³See 47 USC § 214.

²⁴See 47 USC § 202(a).

²⁵See supra note 3.

that can best be accomplished -- from articulating that vision in the form of a well-thought-out alternative. The only purpose served by instituting a notice of inquiry now, and pushing the necessary rulemaking effort off down the road, would be delay of what all have said is so important. If, indeed, "the time is ripe"²⁶ for access reform to ensue, then there is no reason to delay.

V. CONCLUSION

For the reasons stated, USWC urges the Commission to grant USTA's Petition and to release a notice of proposed rulemaking based upon USTA's Petition without delay.

Respectfully submitted,
U S WEST COMMUNICATIONS, INC.

By: _____

Laurie J. Bennett
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2763

Its Attorney

November 16, 1993

²⁶MCI at 2.

8

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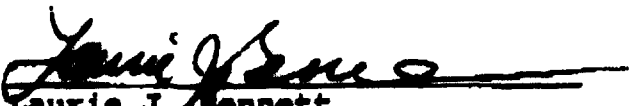
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U S WEST COMMUNICATIONS, INC.

By:


Laurie J. Bennett
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2763

Its Attorney

November 16, 1993

²⁶NCI at 2.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 16th day of November, 1993, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.**, to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

***Via Hand-Delivery**

(RM-8356/LB/lh)

***Kathleen B. Levitz**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Ruth Milkman**
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

***Gregory J. Vogt**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

***Donna Lampert**
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

***Judith A. Nitsche**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

***Melissa Newman**
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

***Ann H. Stevens**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

***Charles W. Needy**
Federal Communications Commission
Room 257
2000 L Street, N.W.
Washington, DC 20036

***Jill Ross Meltzer**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Barbara Esbin**
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services
Suite 140
2100 M Street, N.W.
Washington, DC 20037

Mark H. Blake
Community Service Telephone
Company
P.O. Box 400
Winthrop, ME 04364

James Bradford Ramsay
Paul Rodgers
Charles D. Gray
NARUC
P.O. Box 684
1102 ICC Building
Washington, DC 20044

Joseph P. Markoski
Kerry E. Murray
Squire, Sanders & Dempsey
P.O. Box 407
Washington, DC 20044

Martin T. McCue
Linda Kent
United States Telephone Association
Suite 800
900 19th Street, N.W.
Washington, DC 20006-2105

Richard A. Askoff
National Exchange Carrier
Association, Inc.
Room 5E2A05
100 Jefferson Road
Whippany, NJ 07981

Todd R. Reilly
Taconic Telephone Corporation
Old Route 22
Copake, NY 12516-0100

David Cosson
Stephen E. Watkins
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

James P. Tuthill
John W. Bogy
Pacific/Nevada Bell
Room 1530-A
140 New Montgomery Street
San Francisco, CA 94105

James L. Wurtz
Pacific/Nevada Bell
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Lawrence W. Katz
Edward D. Young III
John Thorne
Bell Atlantic Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

Robert M. Lynch
Richard C. Hartgrove
Michael J. Zpevak
Southwestern Bell Telephone Company
Room 3520
One Bell Center
St. Louis, MO 63101

Richard McKenna
GTE Service Corporation
HQE03J36
P.O. Box 152092
Irving, TX 75015-2092

Margot Smiley Humphrey
Koteen & Naftalin
Suite 1000
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Leonard J. Kennedy
Steven F. Morris
Dow, Lohnes & Albertson
Suite 500
1255 23rd Street, N.W.
Washington, DC 20037

Ray Brown
Moore & Liberty Telephone Company
301 Dewey Street
Enderlin, ND 58027

Michael S. Pabian
Ameritech Operating Companies
Room 4H76
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Howard E. Pottenger
Tipton Telephone Company Inc.
P.O. Box 287
Tipton, IN 46072

Terrence L. Barnich
Illinois Commerce Commission
Suite C-800
160 North La Salle Street
Chicago, IL 60601-3104

Kenneth Lein
Winnebago Cooperative Telephone
Association
704 East Main Street
Lake Hills, IA 50450

Roslyn M. Thony
Armstrong Telephone Companies
One Armstrong Place
Butler, PA 16001

Thomas P. Gorman
Yelm Telephone Company
P.O. Box 593
Yelm, WA 98597

John A. Magyar
Ketchikan Public Utilities
2930 Tongass Avenue
Ketchikan, AK 99901

Kathy L. Shobert
General Communications, Inc.
Suite 600
888 16th Street, N.W.
Washington, DC 20006

Jay C. Keithley
United Telephone Companies and
Central Telephone Companies
Suite 1100
1850 M Street, N.W.
Washington, DC 20036

Richard J. D'Antonio
The Bentleyville Telephone Company
508 Main Street
Bentleyville, PA 15314

W. Richard Morris
United Telephone Companies and
Central Telephone Companies
P.O. Box 11315
Kansas City, MO 64112

Robert E. Fisher
Barry County Telephone Company
P.O. Box 128
Delton, MI 49046

Robert L. Helmly
Home Telephone Company, Inc.
P.O. Box 1194
Moncks Corner, SC 29461

Michael F. Hydock
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Calvert B. Lyon
Moapa Valley Telephone Company
201 South Anderson Street
Overton, NV 89040

Genevieve Morelli
Competitive Telecommunications
Association
Suite 220
1140 Connecticut Avenue, N.W.
Washington, DC 20036

G.A. Gorman
North Pittsburgh Telephone Company
4008 Gibsonia Road
Gibsonia, PA 15044-9311

Danney E. Adams
Jeffrey S. Linder
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Leon M. Kestenbaum
H. Richard Juhnke
Sprint Communications Company
11th Floor
1850 M Street, N.W.
Washington, DC 20036

Edward R. Wholl
Edward E. Niehoff
NYNEX Telephone Companies
120 Bloomingdale Road
White Plains, NY 10605

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, Chartered
Suite 300
3000 K Street, N.W.
Washington, DC 20007

James S. Blaszak
Francis E. Fletcher, Jr.
Gardner, Carton & Douglas
Suite 900 - East Tower
1301 K Street, N.W.
Washington, DC 20005

C.M. Darries
Blossom Telephone Company
P.O. Box 8
Blossom, TX 75418